IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1458

ALFRED A. ROBERTS,
Petitioner,

v.

STATE OF OHIO,
Respondent.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

Motion to Dismiss or Affirm

Respondent, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Ohio on the grounds that the petition does not present a substantial federal question, any federal question sought to be reviewed was not timely or properly raised and the judgment of the Ohio Supreme Court rests on an adequate non-federal basis.

STATEMENT OF THE CASE

This is a highway appropriation proceeding under Ohio Revised Code, Chapter 5519. The case was filed on July 21, 1972, by the Director of Transportation,

State of Ohio, respondent, and secured with a deposit of $6,700.00. The property owner, Mr. Alfred A. Roberts, petitioner, through counsel, timely perfected his appeal. After delay caused by the ill health of counsel for the petitioner, the case was set for trial in October of 1973. At time of trial, however, the petitioner discharged his attorney and the matter was continued until March of 1974.

At the trial the petitioner put on expert testimony in the amount of $68,100.00 and $82,000.000. The respondent presented testimony indicating a total award of $6,750.00. The jury verdict was $12,000.00.

There was timely filed a Motion for New Trial which was not ruled upon by the Trial Court for approximately one year.

The date of the jury verdict was March 8, 1974. The Judgment Entry overruling the Motion for New Trial was filed February 4, 1975. The petitioner timely perfected an appeal to the Seventh District Court of Appeals with a different counsel handling the appeal. The opinion of the Court of Appeals affirming the judgment of the Trial Court was given June 6, 1975. The Journal Entry in the Court of Appeals was filed June 26, 1975. The notice of appeal to the Supreme Court was filed in the Court of Appeals on July 24, 1975, and in the Supreme Court on August 19, 1975.

On October 10, 1975, the Ohio Supreme Court dismissed the appeal (The State of Ohio v. Alfred Roberts, No. 75-765) for the reason that there was no substantial constitutional question of law presented, and on December 5, 1975, a motion for reconsideration was dismissed. It is from this dismissal that the petitioner prays for a writ of certiorari.

BLEED THROUGH

ARGUMENT

The various allegations raised by the petitioner do not present a substantial federal question. While it is difficult to define with exactness the petitioner's reason for this Court to hear his appeal, his petition seems to be an extensive statement of displeasure with the trial, the appeal and the general handling of this case by all concerned.

Nowhere does the petitioner cite to the Trial Court record to show how this case involves a substantial federal question. In the State Seventh District Court of Appeals, the petitioner raised the issue as to the inadmissibility of specific testimony. However, as the Court of Appeals held, no objection was made during trial to the introduction of the testimony and therefore any possible error was waived. (Appendix page 17, petition for writ of certiorari)

The second assignment of error in the Court of Appeals was that the verdict was inadequate, against the manifest weight of the evidence, and given under the influence of passion. The State Court of Appeals ruled that this was a matter of conflicting testimony resolved by the jury. Petitioner was afforded the benefit of experienced trial counsel as well as a different counsel on appeal. It was from this decision that the Ohio Supreme Court dismissed petitioner's appeal for the reason that no substantial state constitutional question was involved.

Thus, it is clear that there was no federal question involved in the trial or appeal of this state appropriation proceeding. As this Court has stated in *Edelman v. People of State of California*, 344 U.S. 357 (1953), the Supreme Court will not decide whether constitutional rights have been violated where federal ques-

tions were not seasonably raised in accordance with the requirements of state law.

The petitioner has the burden of affirmatively establishing the United States Supreme Court's jurisdiction. *Republic Natural Gas Co. v. State of Oklahoma*, 334 U.S. 62 (1948). The criteria to establish jurisdiction for the Supreme Court to review a decision of a state supreme court was summarized in the case of *Durley v. Mayo*, 351 U.S. 277 (1956) at page 281:

> " 'Where the highest court of the state delivers no opinion and it appears that the judgment *might* have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment.' Stembridge v. State of Georgia, 343 U.S. 541, 547, 72 S. Ct. 834, 837, 96 L. Ed. 1130.
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> "It is a well established principle of this Court that before we will review a decision of a state court it must affirmatively appear from the record that the federal question was presented to the highest court of the State having jurisdiction and that its decision of the federal question was necessary to its determination of the cause. Honeyman v. Hanan, 300 U.S. 14, 18, 57 S. Ct. 350, 352, 81 L. Ed. 476; Lynch v. [People of] New York [ex rel. Pierson], 293 U.S. 52, 55 St. Ct. 16, 79 L. Ed. 191. And where the decision of the state court might have been either on a state ground or on a federal ground and the state ground is sufficient to sustain the judgment, the Court will not undertake to review it. Klinger v. [State of] Missouri, 13 Wall. 257, 263, 20 L. Ed. 635; [Walter A.] Wood Mowing & Reaping Machine Co. v. Skinner, 139 U.S. 293, 297, 11 S. Ct. 528, 530, 35 L. Ed. 193; Allen v. Arguimbau, 198 U.S. 149, 154-155, 25 S. Ct. 622, 624, 49 L. Ed. 990; Lynch v. [People of] New York [ex rel. Pierson], supra. . . ."

BLEED THROUGH

In the instant case the petitioner has not shown that he meets any of the criteria to have this case heard by the Supreme Court. It does not affirmatively appear from the record that a federal question was presented to the Ohio Supreme Court, nor has it been shown that a federal question determination was in any way necessary for the Ohio Supreme Court to reach its decision. Finally, the record shows that the decision of the Ohio Supreme Court was based completely on state grounds.

CONCLUSION

Wherefore, respondent respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument and respondent respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Ohio.

Repectfully submitted,

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